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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF JANUARY, 2004

PRESENT

THE HON'BLE MR.JUSTICE S.R.BANNURMATH

AND

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

CRL. A. No.449 OF 2001

BETWEEN:

1. Karbasappa S/o.Vittal Poojary,
   Aged about 37 years,

2. Monappa S/o.Vittal Poojary,
   Aged about 35 years,

3. Vittal S/o.Tukkappa Poojary,
   Aged about 57 years,

   All are residents of Ele-Navadagi
   Village, Aland Taluk, Gulbarga Dist. APPELLANTS

(By Sri.V.N.Madhava Reddy, Adv.)

AND:

1. The State of Karnataka
   Through Narona P.S. RESPONDENT

(By Sri.Marigowda, Addl. SPP.)

This appeal is filed under Section 374 (2) Cr.P.C. praying to set aside the judgment and sentence dated 27.2.2001 passed by the II Addl. Sessions Judge, Gulbarga in S.C.No.2/94, convicting the appellants – accused for the offence punishable under Sections 447, 325 and 302 all read with Section 34 IPC and sentencing them to undergo R.I. for

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3 months for the offence punishable under Section 447 IPC without any fine and further sentencing them to undergo R.I. for one year and to pay fine of Rs.1000/- and in default to undergo R.I. for 6 months for the offence punishable under Section 325 read with Section 34 IPC and also sentencing them to undergo life imprisonment and to pay fine of Rs.3,000/- each and in default to undergo R.I. for one year for the offence punishable under Section 302 read with 34 IPC.

This appeal coming on for final hearing, this day, **S.R. BANNURMATH, J.**, delivered the following:

JUDGMENT

The accused Nos.1, 2 and 4 being aggrieved by the judgment of conviction and sentences dated 27.02.2001 passed by the learned Sessions Judge, Gulbarga, in Sessions Case No.2/1994, have approached this Court in the present appeal. It appears that accused No.3 has not preferred any appeal.

2. The brief facts as per the prosecution case leading to the present appeal are as follows:-

The deceased-Chandrasha, his son P.W.1 – Maruti, P.W.5 –daughter - Prema and P.W.6 - grand son – Sripathi along with other close relatives was residing at Ele-Navadagi

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village in Aland Taluk of Gulbarga District. The appellants are also residents of the same village and are inter se related. Accused Nos.1 and 2 (Appellants-1 and 2) are the sons of Accused No.4. According to the prosecution, one year or so prior to the incident deceased-Chandrasha had purchased a land Sy.No.81 of Bolli village from One Ramachandra – younger brother of accused No.3 – Revansiddappa. As accused No.3 had also a land adjacent to this survey No.81, according to the prosecution the accused had a grudge or ill-will towards deceased-Chandrasha for having deprived them the benefit of having those lands and thus according to the prosecution this dissatisfaction on the part of the accused has led to the present crime.

3. According to the prosecution on the date of incident namely i.e. on 29.06.1993 at about 6 a.m. when the deceased – Chandrasha and his son P.W.1-Maruti were tilling the land, all the four accused with common intention to assault and murder Chandrasha, armed with deadly weapons like axe, stick, knife and stones came to the land where P.W.1 and the deceased-Chandrasha were working, questioned as to why they had purchased the land and then it is alleged that they assaulted the deceased-Chandrasha with the weapons they

were carrying. According to the prosecution, accused No.3 assaulted on the head of the deceased with axe, accused No.2 used a stone to throw at the deceased, accused No.1 beat him with a stick and accused No.4 assaulted with a knife. When P.W.1 tried to rescue his father, it is alleged that the accused especially accused No.1 assaulted him also and thus causing fatal injuries to Chandrasha as well as injuries to Maruti – P.W.1. As per the prosecution case, P.W.6 – daughter of the deceased as well as grand son, who had gone to the land to give lunch (butti) also saw the assault. P.W.7 Siddalinga – an independent witness a young man, who was grazing his sheep nearby is also an eyewitness to the incident. Immediately, after assault when P.W.5 went to the village, which is very nearby and after receiving the information, it is alleged that P.Ws.2 to 4 also came to the spot in a tractor, saw the injured, took them to the jurisdictional Police Station at Narona. In the Police station, statement of P.W.1 is recorded by the A.S.I. in charge of the Police station as per Ex.P.1 and on the basis of the same, a case in crime No.56/1993 against four accused came to be registered for the offences punishable under Sections 447, 326, 325, 324, 504 and 307 r/w. Section 34 IPC. It is to be noted that while the deceased was under treatment, died later and hence, the

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offence under Section 307 IPC has been altered to one under Section 302 IPC.

4. After registration of the case, I.Os. have drawn the necessary mahazars including spot mahazar and inquest proceedings in the presence of independent mahazar witnesses and recorded the statement of eye witnesses and arranged to send the dead body for autopsy. After completion of the investigation and receipt of the necessary records, charge sheet has been filed against all the four accused.

5. On committal and after perusing the charge sheet material, the Trial Court framed charges against the accused for the offences under Sections 447, 325, 302 all read with 34 IPC and as accused denied the charges and claimed to be tried, they are tried in Sessions Case No.2/1994.

6. In order to establish the guilt of the accused, the prosecution has relied upon the evidence of 15 witnesses and got marked Exs.P.1 to P.19 as well as M.Os. 1 to 20. Total denial of prosecution case appears to be the defence strategy as is clear from the answers given by them while being

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questioned under Section 313 Cr.P.C. No defence witnesses have been examined. However, defence has got marked Exs.D1 to D.3 portions from the statements of P.Ws.1, 6 and 7 recorded during the investigation. On appreciation of the entire evidence as already noted, the Trial Court found all the accused guilty of the offences charged and hence, the present appeal.

7. Sri.V.N.Madhava Reddy, learned Counsel appearing for the appellants vehemently challenged the judgment of conviction as well as the findings of the Trial Court. He contended that when the Trial Court has held that no motive has been established by the prosecution, the entire case of the prosecution ought to have been thrown out. He also challenged the findings of the Trial Court as to the evidence of P.W.1 being an injured witness to the incident. Taking us through the evidence of P.W.1, the Doctors as well as the Investigating Officers, it is contended that basically the evidence of P.W.s.1, 5 and 6 are unreliable as they are none else than the closest relative of the deceased. It is also contended that the conduct of P.W.1 in not going to the rescue of the deceased, which is amply proved by absence of any serious injuries on him, clearly goes to show that he was

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not present when the incident has taken place and has been falsely projected as an injured eye witness. Referring to the evidence of P.W.9 – Dr.Sarwar, who has examined P.W.1, it is contended that as the injured P.W.1 has received no injuries on any other parts of the body except fracture of base of the proximal phylanx of index finger and head of middle phylanx of middle finger, the evidence of P.W.1 stated before the Court that he was severely beaten by the accused is falsified. He also contended that presence of P.W.1 also becomes doubtful in view of the admission made by him that the statement of the deceased himself had been recorded by the Police and in fact according to the learned Counsel that should have been the first information and not the statement of P.W.1. The learned Counsel contended that there is a doubt as to whether the incident took place at all in the morning of 29.06.1993 at about 6 a.m. Referring to the evidence of the autopsy doctor P.W.12, it is contended that the Doctor has specifically stated that the deceased might have received the injuries 18 to 24 hours prior to his examination, which clearly establishes that the incident must have taken place much prior to 6 a.m. of 29.06.1993. The learned Counsel also commented upon the evidence of other witnesses P.Ws.5 to 7 as untruthful. He also pointed out towards lapses on the

part of the prosecution in not producing two of the alleged weapons seized as material objects. On these among other grounds, it is contended that as the prosecution evidence is too shaky and unreliable, the judgment of conviction and sentences passed by the Trial Court is liable to be set aside and accused are entitled for benefit of doubt. The learned Counsel also argued in the alternate that even if it is assumed that such an incident took place, taking into consideration the nature of the injuries on the deceased as well as P.W.1, the fact scenario, the distant relationship between the deceased and the accused and at the most, as some of the prosecution witnesses themselves have stated the assault on Chandrasha was due to a sudden quarrel and hence, it cannot be definitely held that there was any intention on the part of the accused to commit the murder of the deceased. As such as an alternate theory, the learned Counsel submits that at the most the motive would be definitely not of homicidal death amounting to murder, but something less viz. teaching a lesson, even by giving some beating, falling either under section 325 or 304 IPC. On the other hand learned State Public Prosecutor argues in support of the prosecution case.

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8. We have heard the learned Counsel on both the sides at length as well as perused the record in detail.

9. At the outset, it is to be noted that Chandrasha met with homicidal death is not much in dispute. Even otherwise, the evidence of the inquest witnesses, autopsy doctor and the post mortem report – Ex.P.15 clearly indicate that on the morning of 29.06.1993, when P.W.12-Dr.Nagesh examined the dead body of the deceased, he noticed as many as 16 external injuries all over the body of the deceased and one internal injury on dissection. According to the Doctor-P.W.12, the cause of death was due to haemorrhage and shock, as a result of multiple injuries. Hence, in our view, the Trial Court was justified in holding that the deceased met with a homicidal death amounting to murder. But the moot question is whether prosecution has proved beyond reasonable doubt that it was the accused who are responsible for the same.

10. On perusal of the entire evidence led by the prosecution, the evidence of the prosecution can be divided into following categories: (1) Eye witness account – P.Ws 1, 5,

6 and 7 out of whom P.W.1 is also an injured witness, (2) Motive and (3) Abscondance of the accused etc.

11. On perusal of the entire evidence, it is seen that basically the Trial Court has committed mistake in rejecting the prosecution evidence so far as motive is concerned. As seen from the evidence of P.Ws.1, 5 and 6, which has been cogently and consistently elicited from the mouths of these witnesses that there was some quarrel between the accused on one hand and the deceased over purchase of a land adjacent to the land of the deceased, that too from the brother of the accused No.3. Since, there is cogency and consistency in this regard and even though the defence has tried to project that the deceased had also many more enemies in the village, in our view, it cannot be definitely said that there was absolutely no motive or ill-will between the accused group and the deceased. As observed by the Apex Court in the case of **STATE OF HIMACHAL PRADESH vs. JEET SINGH** reported in **1999(1) SCC (Cri.) 539** *"when the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire*

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would have swelled up in the mind of the offender to such a decree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution as it is almost impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended".

12. In our view, this proposition holds good even in the present case. When the prosecution has successfully shown that there was some ire or ill-will or even ill-feelings between the accused and the deceased, and same is proved cogently can be a motive for the offence. Hence, we find that the accused did have some motive or ill-will or animus towards the deceased and the probable end result was the death of Chandrasha.

13. So far as the actual incident is concerned, even though the prosecution has projected the evidence of P.Ws.1 to 7 as eyewitnesses, P.Ws.2 to 4 have not supported the prosecution and hence, they have been treated as hostile witnesses. They have denied their presence at the time when

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accused assaulted the deceased. Hence, the evidence of these three witnesses is absolutely of no use to the prosecution so far as eye witnessing the incident. However, as the law regarding evidence of hostile witnesses is concerned, the Court need not straightaway discard their evidence, if helpful to either of the sides and found to be consistent with the theories put forth either by the prosecution or by the defence. Keeping in view this principle, we have also looked into their evidence.

14. Further, even if the evidence of P.Ws.2 to 4 is kept aside for a while there is evidence of P.Ws.1, 5, 6 and 7, who are stated to be the eyewitnesses to the entire evidence. No doubt, it is true that P.Ws.1, 5 and 6 are closely related to the deceased, but by that fact alone their evidence does not become unbelievable or untruthful. Time and again, it is laid down that merely on account of the witnesses being closely related to the victim their evidence cannot be thrown out, if the same is otherwise appears to be truthful. In this regard, the Court is required to see whether their presence is probable and their evidence to be scrutinised properly. With this object in our mind, we have scrutinised the evidence of these three witnesses.

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15. No doubt, it is true that P.W.1 has received one injury on his finger, which is a fracture of base of the proximal phylanx of index finger as well as head of middle phylanx of middle finger as per wound certificate - Ex.P.7. Taking into consideration, the nature of weapons used against this witness namely a club being hard and blunt substance, in our view, there is every possibility of receiving such a nature of injuries even while defending himself or another person as the hard and blunt substance coming in contact with the hand of the person defending. This injury by itself, in our view, is sufficient to fix the presence of P.W.1 at the spot. It is to be noted that it was in the month of June and as such agricultural season, there is nothing strange that the deceased father and the injured son – P.W.1 going to the land early in the morning for carrying on agricultural operations. In our view, merely because the injured P.W.1 has not received more than one injury on his person that fact by itself will not make him absent from the spot or his version untruthful one. This witness has graphically stated as to which of the accused used what weapon and on what part of the body of the deceased as well as himself. We have noted that evidence of this witness has been cogently and

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consistently corroborated by the evidence of other eye-witnesses P.Ws.6 and 7. As such, we find that there is nothing on record to doubt the presence of P.W.1 at the spot as well as his receiving the injuries as projected by the prosecution. When once his evidence is accepted as truthful and believable as to the entire incident, we need not go in further and probe his evidence.

16. Even otherwise presence of P.Ws.5 and 6 - younger daughter of the deceased and grand son in the land also cannot be doubted at all. They both have cogently stated that at the time of the incident they had been to the land to give lunch (butti) to the father of P.W.1 and the deceased as it is usual practice in the village side. We do not find any ambiguity or inconsistency in their version as to the actual say that the accused assaulting the deceased and P.W.1. Moreover, evidence of P.Ws.1, 5 and 6 has been further corroborated by an independent eyewitness in the form of P.W.7. P.W.7 – Siddalinga again a young man stated to have been grazing his sheep nearby and seeing the incident. In spite of probing cross examination, all these witnesses have with-stood their attack and have consistently and cogently stuck to the fact that it was the accused and accused alone

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who assaulted deceased --Chandrasha and P.W.1. On perusal of the entire evidence, since we find that there is absolutely nothing to suspect their veracity or the truthful nature of their evidence, we concur with the Trial Court in believing their eye witness account.

17. Coming to the arguments addressed by the learned Counsel as to the probable and unnatural conduct of P.W.1, in the sense, absence of any serious injury on his part, difference between the oral evidence and medical evidence as to the time factor etc., we need not go into the same in depth since on perusal of the entire evidence, we are satisfied as to the incident taking place in the morning of 29.06.1993 that too in the land of the deceased himself. It is to be remembered that all the witnesses are rustic villagers and they will not have chronometric sense of time. As observed by the Apex Court in the case of **SHIVAJI SAHEBRAO BOBADE AND ANOTHER VS. STATE OF MAHARASHTRA** reported in **AIR 1973 (3) SC 2622** and reiterated and followed in **1975 Madras Law Journal (Crl.) 471** "*Too sophisticated approaches familiar in Courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages.*

When scanning the evidence of the various witnesses the Court has to inform itself that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony, provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The sluggish chronometric sense of the country-side community in India is notorious since time is hardly of the essence of their slow life; and even urban folk make mistakes about time when no particular reason to observe and remember the hour of minor event like taking a morning meal existed. Too much play on such slippery facts goes against realism so essential in a testimonial appraisal".

18. In so far as certain inconsistencies or minor contradictions in the narration or embellishments are concerned as observed by the Apex Court in the case of **RANADHIR BASU VS. STATE OF WEST BENGAL** reported in **AIR 2000 SC 908** "*some inconsistencies of a minor nature in the evidence of the witness can be regarded as natural giving more details while deposing before the court are not to*

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be treated as improvements of such a nature as would create any doubt regarding the trustworthiness of a witness".

19. We have reappreciated the entire evidence before us and find that the ultimate finding of the Trial Court that it was these accused and accused alone who had committed the crime of assault of deceased – Chandrasha and P.W.1 – Maruti is well established beyond any reasonable doubt and hence they are guilty of the offence alleged.

20. In so far as the nature of the offence committed by the accused namely whether it falls under Section 302 IPC or any other category of lesser degree is concerned, taking into consideration the accused were armed with deadly weapons like axes, knife, sticks and stones and assaulted unarmed person that too without any sudden or grave provocation, in our view the offence falls clearly under the category of homicidal death amounting to murder punishable under Section 302 IPC. Even after reappreciation, we find no reason to differ with the reason given by the Trial Court.

21. In the result and for the reasons stated above, in our view the appeal is devoid of merits and hence the same is

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dismissed, upholding the findings of the Trial Court and judgment of conviction and sentences imposed by the Trial Court.

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